

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. The petitioner is a Medicaid recipient who needs transportation to her medical appointments.
2. DCF provides transportation services to the petitioner, and other Medicaid recipients, through contracts with local transportation agencies.
3. The petitioner receives some of her medical care from a team of specialists located in Boston. Prior to this summer, the petitioner was transported to Boston to see her specialists by a local transportation agency in the western part of the state. Over the past six years, she was transported through the Medicaid program to Boston several times each month for treatment.

4. This summer, the petitioner moved to the eastern part of the state, in part to be closer to her specialists in Boston. When she moved, she was served by a new local transportation agency.

5. The new transportation agency advised the petitioner that it would not transport her to Boston unless she provided medical evidence that showed it was "medically necessary" for her to travel to Boston to get her medical services. The agency contended that there was nothing in her file showing that she had ever been authorized to receive such transportation. Beginning August 16, 2005, the new agency denied her request for transportation to Boston and has continued to do so to this day. The petitioner's appeal was received by the Board on August 19, 2005.

6. DCF contends that it never had any information on file that would have verified the petitioner's need to travel to Boston for her medical appointments. DCF took the position that payments made for transportation in the past were in error because of this lack of verification. For this reason, DCF refused to continue payments for transportation pending appeal and also for the reason that it considers each request for transportation a new application requiring verification. At a status conference call to the petitioner

on September 13, 2005, the petitioner stated that she had a complex medical and surgical condition including several operations to the spine and spinal cord which required her to be followed by the same institution for a lifetime. DCF said that it would not contest the petitioner's own statements but that it would require medical verification of the same. The hearing officer advised the petitioner to quickly obtain verification of this situation in as much detail as possible from her medical providers. The petitioner was advised that sufficient documentation could result in a reversal by DCF making a hearing unnecessary.

8. While the petitioner was obtaining this information, she continued to request transportation to subsequent medical appointments. Because DCF would not continue the funding, the hearing officer advised the petitioner through the Board clerk in a memo dated September 22, 2005, to apply for General Assistance for payment of any urgent Medicaid transportation while the appeal was pending. The petitioner declined to take that action for reasons of her own.¹

¹According to information supplied by the clerk on October 25, 2005, the petitioner apparently did apply for GA within the last week and has recently filed an appeal of a denial. No request for an expedited

9. On or about September 26, 2005, the petitioner provided a "Medicaid Transportation Physician Referral Form" from her primary care physician in Vermont stating that the petitioner had been referred to a physician in Boston, that the treatment provided there is medically necessary and this was the closest facility that could provide the treatment due to a need "for continuity of care".

10. DCF responded to that verification the same day stating that it lacked sufficient detail and that "continuity of care" "is not in itself a sufficient reason to justify expenditure of Medicaid transportation funds, because continuity of care is not generally medically necessary." DCF took the position that the same services are available locally and denied the request for transportation.

11. Because DCF did not reverse its position following the receipt of the new medical evidence, the matter went forward for hearing on October 13, 2005.

12. At the October 13 hearing, the petitioner presented new evidence in the form of a letter dated October 5, 2005 from her Boston specialist. The petitioner also testified that she has a rare congenital disease, namely a tethered

hearing was made and will probably not be necessary based on this recommendation.

spinal cord; that the disease was diagnosed late in life; that she has been treated in Boston for six years by a medical team of specialists; that she has undergone three surgeries in non-Vermont hospitals; that without proper medical care she could become a paraplegic or hemiplegic; and that she has tried without success to get similar treatment in Vermont and at DHMC.

13. The October 5 letter from her Boston specialist stated as follows:

I am writing to request Medicaid funded transportation for [the petitioner] to continue receiving her care at the Brigham and Women's Hospital in Boston, Massachusetts. I am currently [the petitioner's] primary care physician. In 1995 she was diagnosed with Occult Spinal Dysraphism and since 1999 has been a patient both here at Brigham and Women's and the Dana Farber Cancer Institute, a partner hospital of ours. Her care has involved multiple spinal cord surgeries as well as treatment by pain and neurology specialists. As such, she has required coordinated care of multiple medical teams including her primary care team, pain specialists, and neurosurgery. I strongly recommend that she continue to receive her care here as we are most familiar with her complex past medical history and are best fit to offer her continuity of care, which is an essential element in the successful monitoring and coordination of complex patients.

The [petitioner] reports having provided extensive medical information to the Vermont Board of Human Services documenting this request, but should you have any additional questions, please contact me at [phone number]. [Petitioner] may also be contacted at [phone number].

14. At the hearing DCF asked for and was given leave to review and respond to this new medical information. The record was left open until October 20, later amended to October 21, 2005, to do so. Subsequent to the hearing, the petitioner, apparently misunderstanding the process involved², asked the hearing officer to recuse herself from the process due to bias, which request was denied.

15. On October 18, 2005, the petitioner provided a third letter from her Vermont psychologist in support of her request. That letter states as follows:

I am writing this letter on behalf of my patient [petitioner]. I have seen [petitioner] 21 times since February 25, 2005. She suffers from occult spinal dysraphism (also known as spina bifida occulta), which can result in hemiplegia or paraplegia if not properly and timely treated by subspecialists in neurosurgery and orthopedic surgery. As I understand it, her spinal cord is abnormally attached in such a way as to cause intense pain and restrict circulation and movement. If not properly and timely treated, she could wind up

² It appears that the petitioner believed that DCF had accepted her medical evidence as dispositive at the hearing and that the hearing officer had urged DCF to reject it. In fact, DCF's attorney stated that he had no authority to approve the transportation without consulting with his client, the medical director, and asked to keep the record open for possible further submissions. The hearing officer gave DCF a date certain by which to provide any further evidence and advised DCF that any contrary medical evidence it might wish to submit had to be submitted in the form of a signed statement by its medical director or a signed statement by the petitioner's own physician possibly to be accomplished by e-mail in order to speed up the decision. This warning was issued because in past cases involving medical issues, DCF has frequently attempted to submit hearsay statements obtained in telephone calls to petitioners' physicians and conversations with its own medical director via letters signed only by DCF's attorneys, and not by the physicians themselves.

paralyzed. I am not a medical doctor, but it is my understanding that M.D.s such as family practitioners and internists have the job of diagnosing and treating 95% of the diseases they encounter. Clearly [petitioner's] problem falls in the other 5%.

[Petitioner] has been having difficulties getting transportation financed by Medicaid to see the sub-specialists she needs to (especially those out of state). It is my perception that her psychological condition is not a factor interfering with her presentation of the medical needs she has, although her self-advocacy has led some to believe that her medical problems are primarily psychological in nature.

Please so whatever you can to help this impecunious and medically needy elderly disabled patient.

16. DCF responded in a letter dated October 18, 2005, that it needed additional documentation because its medical director wished to review the petitioner's treatment records for the most recent six to twelve months. The medical director's statement was as follows:

In reviewing [petitioner's] case I find there to be a lack of documentation to support the absolute medical necessity of continuing her care with her current medical providers. The only valid argument that can be made to represent that position clinically is that this patient's doctors have such an intimate knowledge of her medical condition that it is irreproducible by other equally trained medical professionals. I cannot possibly arrive at that justification without the full benefit of the records of her recent medical visits to ascertain the nature of these encounters that would preclude other doctors from delivering the same care.

17. Because DCF had suspended transportation benefits to Boston pending this hearing; because the petitioner's

appeal had been pending for over sixty days; and because DCF knew or should have known that the petitioner was claiming "continuity of care" as a basis for her request at least as of the status conference on September 13, 2005, the hearing officer would not allow the record to remain open for submissions by DCF beyond October 21, 2005 in order to present this matter to the Board for November 2, 2005. This ruling was communicated to DCF on October 19, 2005. Nothing further was submitted by DCF between October 18 and October 21, 2005 and the record was closed.

18. It is found based on the documentation provided by the petitioner's three medical providers as well as her own testimony that her trips to the Boston area to see medical providers are medically necessary for her care. This finding is based both upon the rarity and complexity of her disease as well as the long-time care she has received from specialists in Boston, the continuation of which is essential to her proper treatment.

ORDER

DCF's decision denying treatment is reversed.

REASONS

DCF agrees in this matter that the petitioner is in need of special medical care for her complex condition and that she has a personal right to obtain that treatment from any Medicaid provider she chooses. DCF disagrees with the petitioner that she has a right to be transported to Boston for this care because it believes that she can obtain such treatment in its usual transportation catchment area. DCF's regulation regarding transportation is set forth in the following regulation:

Transportation

Transportation to and from necessary medical services is covered and available to eligible Medicaid recipients on a statewide basis.

The following limitations on coverage shall apply:

1. Prior authorization is required. (Exceptions may be granted in a case of a medical emergency.)
2. Transportation is not otherwise available to the Medicaid recipient.
3. Transportation is to and from necessary medical services.
4. The medical service is generally available to and used by other members of the community or locality in which the recipient is located. A

recipient's freedom of access to health care does not require Medicaid to cover transportation at unusual or exceptional cost in order to meet a recipient's personal choice of provider.

5. Payment is made for the least expensive means of transportation and suitable to the medical needs of the recipient.
6. Reimbursement for the service is limited to enrolled transportation providers.
7. Reimbursement is subject to utilization control and review in accordance with the requirements of Title XIX.
8. Any Medicaid-eligible recipient who believes that his or her request for transportation has been improperly denied may request a fair hearing. For an explanation, see the "Fair Hearing Rules" listed in the Table of Contents.

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The petitioner has presented ample evidence that her trips to Boston are medically necessary under the first sentence and paragraph 3 of the above regulation because continuity of care for her complex and rare condition is essential to productive treatment. DCF's continuous and well-established provision of transportation to the petitioner over a number of years has in large part engendered her continuing need at this point. As the petitioner has satisfied the condition set forth in the above regulation, DCF's decision to deny her request must be

reversed as inconsistent with the above regulation. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

DCF had asked for additional time to obtain and review further evidence of the petitioner's need which was denied insofar as it could not be accomplished by October 21, 2005. That decision was made because on August 16, 2005, DCF abruptly deprived the petitioner of all transportation to the medical providers she had been seeing for over six years and has continued to deny such transportation while she obtained verification of her need. As the petitioner did not wish to pursue transportation through the General Assistance process (which requires a stronger showing of "emergency" need), it was necessary in fairness to her to bring this matter before the Board as soon as possible following her verification of her medical need. DCF was allowed to respond within a short time frame which would still allow preparation of a recommendation for the Board meeting. However, giving DCF extra time would have meant at least another month for the petitioner to wait for benefits and to miss several more appointments.

DCF is correct that it is always the burden of the Medicaid recipient to provide documentation of eligibility for a program or service including a need for medical

transportation. See Fair Hearing Rule No. 11. However, in this case the petitioner alleged that she had presented such verification long ago and, indeed, DCF had been providing her transportation as if she had. Given the facts, DCF should have continued the petitioner's transportation benefits while it investigated her need as it does when a timely appeal is taken of any proposal to terminate benefits. See M143. The fact that the benefits may have been granted in error is not a ground for cutting off benefits once an appeal is lodged. Equally unpersuasive is DCF's assertion that each trip is a separate decision requiring its own authorization as DCF clearly does not ask for a medical necessity note every time a client goes out of state to see the same doctor for the same problem.³ DCF's insistence on an opposite course has put the petitioner in a difficult position which requires the swiftest possible action by the Board. DCF is free to investigate the petitioner's continued need for this benefit if it wishes but now has a clear burden of proving that the

³ If this was indeed a requirement, DCF would have been asking the petitioner for authorization on a regular basis for medical verification during the last six years. DCF does not allege that this was done nor that it was a regular practice.

situation has changed to succeed in withdrawing this benefit from the petitioner in the future. See Fair Hearing Rule 11.

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